IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 27.9.2006

Mohinder Singh and others

...Appellants

versus

Samma Singh and others.

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.Sumit Goel, Advocate
for the appellants.
Mr.R.S.Bains, Advocate
for the respondents.

UMA NATH SINGH, J. (ORAL)

This Regular Second Appeal arises out of the judgment and decree dated 15.10.1997 passed by learned first Appellate Court/Additional District Judge, Rupnagar, in Civil Appeal No.50 dated 17.5.1993, dismissing the appeal filed by the present appellants against the judgment and decree dated 3.4.1993 passed by learned Sub Judge IInd Class, Kharar, in Civil Suit No.646 of 20.11.1989, filed by the present respondents.

At the time of issuance of notice of motion and also thereafter when the appeal was admitted, the only question that weighed in the mind of the Court was that whether after suffering the decree, the appellants could still continue to be in possession of the land as tenant under Section 18 of the Punjab Security of Land Tenures Act, 1953 (for short `the Act'). Admittedly, any proceeding in respect of the land in question was to be started only under this Act and the appellants finally suffered an adverse order in respect of their claim for right as owner of the property passed by

learned Collector Agrarian, Amritsar. Thereafter, when the respondents filed the aforesaid suit for possession of the land in question before learned Sub Judge IInd Class, Kharar, to their utter surprise, the appellants came with a decree in respect of the said land asserting their right as owner of the property on account of collusion between the appellants and their father, who had suffered a decree in favour of the appellants in respect of the disputed land after he had won the case under the Act at initial stage, which was finally decided against them. Undoubtedly and admittedly throughout in the civil suit, the appellants asserted their right only as the owner of the property and not as the tenant. The fact about the aforesaid decree came to the notice of the respondents at the time when the written statement was filed on behalf of the present appellants. Now since they have suffered a decree in respect of possession in favour of the respondents, it would not be alternatively open for them to assert their right as the tenant under the aforesaid Act, once they have throughout asserted and contested the case as the owner of the property.

Accordingly, I do not find any merit in the Regular Second Appeal and the same is dismissed.

September 27, 2006 **(UMA NATH SINGH)**
pk **JUDGE**